

*United States Court of Appeals  
for the Second Circuit*



**APPELLANT'S  
APPENDIX**



75-2007<sup>B</sup>  
7cc *Pgs*

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

WILLIAM BREWINGTON

Appellant,

-against-

UNITED STATES OF AMERICA,

Docket No. 75 Cr.2007

Appellee.

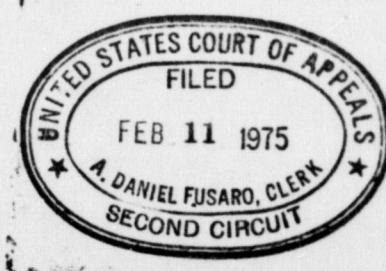
APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM AN ORDER OF THE  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

WILLIAM EPSTEIN

Of Counsel



**PAGINATION AS IN ORIGINAL COPY**

D. C. 10

05-740 971  
DOCKET

ପିଲାମିନିଟ୍ୟୁ 255

~~11166~~

**TITLE OF CASE**

ATTORNEYS

WILLIAM BREWINGTON

*For Plaintiff:*

William Brewington

10

UNITED STATES OF AMERICA

P.M.B. 78070-158

Atlanta, Georgia

*For Defendant:*

BASIS OF ACTION: PURSUANT TO SEC. 2255  
(Related Case 73-CR-303)

JURY TRIAL CLAIMED

ON

### ABSTRACT OF COSTS

RECEIPTS. REMARKS. ETC.

TO WHOM DUE	AMOUNT
-------------	--------

74-c-971 WILLIAM BREWINGTON vs. U.S.A.

1  
2 We have no objection to continuing his  
3  
bail status.

4  
5 THE COURT: You'll be continued on  
present personal recognizance bond.

6 MR. HOFFMAN: \$3,000 bond.

7 MR. LAZARUS: \$3,000 cash, \$30,000  
bond.

8  
9 THE COURT: Mr. Long, I think I mentioned  
it before. I mentioned it, do you have any  
10  
objection to Mr. Hoffman representing you?

11 DEFENDANT LONG: No objection.

12 THE COURT: Mr. Brewington?

13 DEFENDANT BREWINGTON: Yes?

14 THE COURT: How old are you?

15 DEFENDANT BREWINGTON: 44.

16 THE COURT: How far did you go through  
17  
school?

18 DEFENDANT BREWINGTON: 3rd Grade.

19 THE COURT: Can you read and write?

20 DEFENDANT BREWINGTON: No.

21 THE COURT: Has somebody read the  
22  
indictment to you?

23 DEFENDANT BREWINGTON: Yes.

24 THE COURT: Have you been earning a  
25 living for a number of years?

1 DEFENDANT BREWINGTON : Yes.

2  
3 THE COURT: Do you think you understand  
4 what your problem is if you're able to talk  
5 sensibly with Mr. Hoffman about it?

6 DEFENDANT BREWINGTON: Yes.

7 THE COURT: Are you satisfied with him  
8 as your lawyer?

9 DEFENDANT BREWINGTON: Yes.

10 THE COURT: You're indicted as Willie  
11 Brewington. Is that your right name?

12 DEFENDANT BREWINGTON: Yes.

13 My right name is William.

14 (continued on the next page.)

15

16

17

18

19

20

21

22

23

24

25

2  
3 THE COURT: But your name is sometimes  
known as Willie?

4 DEFENDANT BREWINGTON: Yes.

5 THE COURT: Now, you've heard what I  
6 said about the indictment. You're charged as  
7 part of the same conspiracy; you understand  
8 that?

9 DEFENDANT BREWINGTON: Yes.

10 THE COURT: Do you want me to read it  
11 or do you understand enough about it?

12 DEFENDANT BREWINGTON: I understand  
13 it.

14 THE COURT: In your offer to plead guilty,  
15 are you acting of your own free will?

16 DEFENDANT BREWINGTON: Yes.

17 THE COURT: Again, you have a right to  
18 go to trial if you want and as soon as I get  
19 the other cases out of the way, I would proceed  
20 or would have proceeded when Miss Perry was on  
21 trial.

22 At that time, the Government will have  
23 to prove your guilt beyond a reasonable doubt  
24 starting out with the presumption that you're  
25 innocent and did nothing wrong and you've got

1  
2 a right to counsel, to cross examine the Government's  
3 witnesses, and to bring in your own witnesses,  
4 if you want. Do you understand all that?

5 DEFENDANT BREWINGTON: Yes, sir.

6 THE COURT: If you plead guilty, you  
7 can't change your mind and you'll get treated  
8 just as if you've been found guilty.

9 DEFENDANT BREWINGTON: Yes, sir.

10 THE COURT: Again, Mr. Lazarus, there's  
11 been a promise to dismiss count one and the prior  
12 indictment: is that correct?

13 MR. LAZARUS: Yes, and an additional  
14 promise. The additional promise is the Government  
15 will recommend to your Honor a specific term as  
16 to what the sentence should be with the under-  
17 standing that it is in no way binding upon the  
18 Court. We will make our recommendation on that.

19 THE COURT: You'd better tell me now.

20 MR. LAZARUS: We're going to recommend  
21 a sentence of 6 years, with the understanding  
22 that it is in no way binding upon your Honor.

23 THE COURT: I will have to consider  
24 what the relationship of the various defendants  
25 are.

2 It is not beyond the realm of possibility.

3 Mr. Hoffman, do you know of any other  
4 promises?

5 MR. HOFFMAN: Only, your Honor, the  
6 defendant was convicted on another case arising  
7 out of the arrest on this case. I believe  
8 that Mr. Lazarus will not object to a motion to  
9 have the sentences run concurrently.

10 THE COURT: That is sometimes done in  
11 this court.

12 MR. LAZARUS: The defendant Brewington  
13 was convicted in the Southern District for  
14 narcotics arising out of this arrest on the  
15 indictment. We will take no position on whether  
16 or not your Honor wishes to impose consecutive.

17 THE COURT: I don't have consecutive.  
18 That's narcotics found in his apartment?

19 MR. LAZARUS: Yes, your Honor.

20 THE COURT: Mr. Brewington, you've  
21 heard what's been said about promises. Has  
22 there been any other promises made to induce  
23 you to plead guilty?

24 DEFENDANT BREWINGTON: Only the  
25 narcotics found in my apartment.

2 MR. HOFFMAN: Any other promise?

3 DEFENDANT BREWINGTON: No.

4 THE COURT: Any threats to make you  
5 plead guilty?

6 DEFENDANT BREWINGTON: No.

7 THE COURT: Have you been recently  
8 treated by a doctor or psychiatrist?

9 DEFENDANT BREWINGTON: A doctor, yes.

10 THE COURT: What kind of ailment?

11 DEFENDANT BREWINGTON: I had a spinal  
12 operation.

13 THE COURT: Does that interfere with  
14 your ability to make up your mind today?

15 DEFENDANT BREWINGTON: No.

16 THE COURT: Have you been hospitalized  
17 or treated for narcotic addiction?

18 DEFENDANT BREWINGTON: No, sir.

19 THE COURT: Are you under any medication  
20 or ailment today that would interfere with  
21 your making up your mind on this matter?

22 DEFENDANT BREWINGTON: No.

23 THE COURT: Although the Government has  
24 recommended a six-year sentence, do you understand  
25 that it's up to me to decide within the limits

1 imposed by the Statute?

2 DEFENDANT BREWINGTON: Yes, sir.

3 THE COURT: Are you pleading guilty because  
4 you did, in fact, commit the offense; did you  
5 supply the narcotics?

6 DEFENDANT BREWINGTON: No, sir.

7 THE COURT: Where did they come from?

8 DEFENDANT BREWINGTON: I really don't  
9 know.

10 THE COURT: What did you have to do with  
11 it?

12 DEFENDANT BREWINGTON: I couldn't --  
13 you could call it conspiring.

14 THE COURT: Did you help Miss Perry get  
15 narcotics?

16 DEFENDANT BREWINGTON: I introduced her  
17 to somebody.

18 THE COURT: Who?

19 DEFENDANT BREWINGTON: A fellow that I  
20 know.

21 THE COURT: Somebody that you know about  
22 or don't know about?

23 MR. LAZARUS: Somebody we don't know about.

24 THE COURT: Did you introduce her for

1  
2 the purpose of getting some cocaine?

3 DEFENDANT BREWINGTON: Well, she said  
4 she wanted to buy something. I introduced  
5 her. I don't know what she bought, really.  
6 I don't know what she bought.

7 THE COURT: Have you told the Government  
8 the best information you can give about who you  
9 got the narcotics from or whom you introduced her  
10 to?

11 DEFENDANT BREWINGTON: Judge, your Honor,  
12 that's kind of -- it's a dangerous thing. I've  
13 got a family. I'd rather you try me. I have  
14 babies. It's kind of tough.

15 THE COURT: Mr. Lazarus, I gather the  
16 Government has attempted to get what cooperation  
17 it can heretofore? Does this affect, in any  
18 way, your recommendation?

19 MR. LAZARUS: No, your Honor.

20 THE COURT: There's no question in your  
21 mind that you did help Miss Perry get narcotics?

22 DEFENDANT BREWINGTON: That's right.

23 THE COURT: Is there any reason why your  
24 plea should not be accepted?

25 MR. HOFFMAN: None, your Honor.

1  
2 THE COURT: Mr. Brewington, knowing your  
3 rights, what you face, do you still want to plead  
4 guilty?

5 DEFENDANT BREWINGTON: Yes.

6 THE COURT: I find the plea is made with  
7 knowledge of the defendant's rights and of the  
8 consequences of the plea, and that's it's  
9 voluntary, and there is a basis in fact for all  
10 of the elements in the crime.

11 Mr. Lazarus, wouldn't it be just as well  
12 to get Mr. Brewington -- where is he?

13 MR. LAZARUS: He's in West Street, but not  
14 on these charges. He's made bail in this  
15 particular case. He did not make bail in the  
16 Southern District.

17 THE COURT: I see.

18 When will he be sentenced in the Southern  
19 District?

20 MR. LAZARUS: I believe he was tried  
21 there approximately 3 weeks ago.

22 THE COURT: It might be just as well if  
23 I adjourn sentence here until after the Southern  
24 District sentence, so that I can determine and  
25 control whether it's consecutive or concurrent.

FILED  
CLERK'S OFFICE  
STRICT COURT E.D. N.Y.

MFILMED

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JUL 30 1974 X

cc

WILLIAM BREWINGTON, : 74-C-971  
Petitioner, :  
- against - :  
UNITED STATES OF AMERICA, : July 26, 1974  
Respondent. :  
-----X

Submitted by:

WILLIAM BREWINGTON  
Petitioner, Pro se

J U D D, J.

MEMORANDUM AND ORDER

Petitioner seeks to vacate a conviction for possession of cocaine with intent to distribute. He was sentenced on September 14, 1973 after a plea of guilty to a term of six years imprisonment plus ten years special parole term.

Petitioner complains that he was not advised at the time of his guilty plea on June 25, 1973 that there might be a special parole term in addition to his sentence. Petitioner's assertion is not supported by any documentation.

Since he had previously been found guilty of possession of heroin in a different case in the United States District Court for the Southern District of New York, he must in any event have been aware of the potential penalty when he pleaded guilty here. His sentence in the Southern District, according to the record, was to ten-year concurrent terms plus a special parole term of six years, imposed on July 24, 1973 after a guilty verdict by a jury.

There is no meritorious reason to vacate the sentence.

It is ORDERED that the motion be denied.

  
\_\_\_\_\_  
U. S. D. J.



Certificate of Service

\_\_\_\_\_, 19

I certify that a copy of this brief and appendix has  
been mailed to the United States Attorney for the Southern  
District of New York.

William Carlton